

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
WENDELL L. GRIFFEN, JUDGE

DIVISION II

CACR05-921

May 3, 2006

MICHAEL D. GAULT
APPELLANT

AN APPEAL FROM GRANT
COUNTY CIRCUIT COURT
[CR04-60-2]

V.

HON. PHILLIP H. SHIRRON, JUDGE

STATE OF ARKANSAS
APPELLEE

AFFIRMED

Michael Gault appeals from his convictions for criminal attempt to manufacture methamphetamine, possession of drug paraphernalia with intent to manufacture methamphetamine, aggravated assault, and fleeing. He challenges the sufficiency of the evidence, arguing that the State presented insufficient evidence of the identity of the suspect. We hold that the State presented sufficient evidence of the suspect's identity; therefore, we affirm.

Corporal Ronnie Anderson of the Arkansas State Police testified that he was working radar on northbound U.S. Highway 167 at 10:30 a.m. on April 7, 2004, when a vehicle passed him traveling seventy-five miles per hour in a fifty-five mile-per-hour zone. Corporal Anderson stated that he turned to initiate a traffic stop, after which the driver fled. He testified that the driver made a couple of U-turns in the middle of the highway and then drove out through a field, abandoned the vehicle, and fled on foot. Corporal Anderson identified the driver of the vehicle as appellant. He stated that he had three occasions during the chase

to observe appellant. First, when Corporal Anderson thought appellant was going to stop, he pulled his car beside appellant and looked at him. He next saw appellant when appellant made a U-turn and struck the front of his car. Finally, Corporal Anderson saw appellant when appellant ran through the woods. Corporal Anderson testified that appellant was wearing a camouflage-type do-rag on his head and a blue plaid jacket. He identified the clothing at trial. Corporal Anderson stated that the windows of the suspect's vehicle were not tinted and that he was able to positively identify appellant. Later that day, he went back to the police department and identified appellant as the same person he saw in the chase earlier. On cross-examination, Corporal Anderson stated that his initial plan was to make a traffic stop. He testified that he never saw appellant prior to the chase. On redirect examination, Corporal Anderson testified that he was absolutely certain that appellant was the person that he saw in the chase, but on recross examination, he testified that appellant was not wearing the flannel jacket or do-rag when he identified him later that evening.

Agent Brent Cole of the Sheridan Police Department testified that he responded to the call of Corporal Anderson. When he arrived at the scene, Corporal Anderson and a canine officer were in the woods looking for the suspect. Agent Cole stated that he went to suspect's vehicle and smelled iodine, which he knew to be used in the manufacture of methamphetamine. He started searching the rear of the suspect's vehicle, where he found other components for manufacturing methamphetamine. Agent Cole testified that he came in contact with appellant later that evening. Appellant was wearing a shirt that matched the shirt that he had seen in the video taken from Corporal Anderson's vehicle. Agent Cole stated that appellant was not wearing anything on his head at the time; however, he later found a camouflage sleeve in appellant's right front pocket, which Agent Cole stated could have been used as a headband or do-rag.

The State rested its case after calling an expert to testify about the items found in the

suspect's vehicle. Appellant then moved for a directed verdict, contending that Corporal Anderson's testimony about the identity of the suspect was insufficient to support a conviction. The court denied the motion. Appellant renewed his motion after presenting his case, which consisted of testimony from his son, who stated that he and appellant scouted turkeys for hunting that morning; and from Captain Bob Williamson of the Sheridan Police Department, who testified that appellant had a pair of camouflage binoculars with him when he was booked, which one would use if one were scouting turkeys. The renewed motion was also denied. The jury found appellant guilty of criminal attempt to manufacture methamphetamine, possession of drug paraphernalia with intent to manufacture methamphetamine, aggravated assault, and fleeing. Appellant was sentenced to a total of seventy-four years in the Arkansas Department of Correction.

For his sole point on appeal, appellant argues that the trial court erred in denying his motion for directed verdict. A motion for directed verdict is a challenge to the sufficiency of the evidence. *Whisenant v. State*, 85 Ark. App. 111, 146 S.W.3d 359 (2004). On appeal from a denial of a motion for directed verdict, the sufficiency of the evidence is tested to determine whether the verdict is supported by substantial evidence, direct or circumstantial. *Id.* In determining whether there is substantial evidence to support the verdict, this court reviews the evidence in the light most favorable to the State and considers only the evidence that supports the verdict. *Id.* Substantial evidence is that evidence which is of sufficient force and character to compel a conclusion one way or the other beyond suspicion or conjecture. *Id.*

Appellant argues that the evidence is insufficient to support his conviction because the State presented no evidence placing him in possession of the vehicle or at the scene and because Corporal Anderson's identification at the scene was "suspect, vague and unreliable." As part of his argument, he discusses six factors, which he argues this court should consider

in determining the reliability of a suspect identification:

(1) the prior opportunity of the witness to observe the alleged act; (2) the accuracy of the prior description of the accused; (3) any identification of another person prior to the pretrial identification procedure; (4) the level of certainty demonstrated; (5) the failure of the witness to identify the defendant on a prior occasion; and (6) the lapse of time between the alleged act and the pretrial identification.

Appellant's Brief at 10-AG. Appellant cites *Chism v. State*, 312 Ark. 559, 853 S.W.2d 255 (1993), and *Travis v. State*, 328 Ark. 442, 944 S.W.2d 96 (1997), in support of using these factors to determine whether the evidence was sufficient to support his conviction.¹ However, the relevant portions of both cases involved a challenge to the in-court identification of the accused due to a tainted pre-trial photo lineup. Appellant does not challenge the admissibility of any out-of-court suspect identification. He merely argues that the State failed to present evidence sufficient to place him in possession or ownership of the suspect vehicle or the items found therein. Appellant's reliance on these factors is misplaced.

The State relies on *Bowman v. State*, 83 Ark. App. 223, 125 S.W.3d 833 (2003), in support of its position that it did present sufficient evidence of the suspect's identity. There, the victim testified that she saw the appellant earlier in the day in question when he stopped his vehicle and told her not to put her foot on the ground while riding her bicycle. Later that day, the appellant pulled up beside her, exposed himself, and quickly drove off. The appellant challenged the sufficiency of the evidence, arguing that the in-court identification of the suspect was unreliable. We stated, "Absent an allegation of constitutional infirmity in the eyewitness identification process, the reliability of [the victim's] identification of

¹Both cases involved several points on appeal, including challenges to the sufficiency of the evidence. However, neither of the sufficiency challenges involved the identity of the suspect. See *Travis v. State, supra* (holding that the challenge to the sufficiency of the evidence was not preserved for appellate review without discussing the merits of the challenge); *Chism v. State, supra* (holding that the evidence was insufficient to support a kidnapping charge, but on the basis that the State failed to prove that the victim's liberty was restrained in excess of the restraint that incidental to the accompanying battery and theft).

appellant was a question for the factfinder.” *Id.* at 225, 125 S.W.3d at 834 (citing *Phillips v. State*, 344 Ark. 453, 40 S.W.3d 778 (2001)). We continued:

For instance, in *Stipes v. State*, 315 Ark. 719, 870 S.W.2d 388 (1994), Stipes questioned the reliability of the victim’s identification of him as the perpetrator. In considering his argument, the court stated that “when a witness makes a positive identification of a suspect, any challenge to the reliability of the identification becomes a matter of credibility for the factfinder to determine,” and “[t]he factfinder’s decision will not be disturbed on appeal when there is substantial evidence to support it.” *Stipes*, 315 Ark. at 721, 870 S.W.2d at 389. Further, the court stated that “unequivocal testimony identifying the appellant as the culprit is sufficient to sustain a conviction.” *Id.* The court affirmed Stipes’s convictions, concluding that the victim’s unequivocal pretrial and in-court identifications of Stipes as the perpetrator constituted sufficient evidence.

Id.

It is essential to every case that the accused be shown as the one who committed the crime. *Williams v. State*, 308 Ark. 620, 825 S.W.2d 826 (1992). Here, Corporal Anderson identified appellant as the suspect involved in the chase. Absent a constitutional challenge, any challenge to the reliability of his identification of the suspect was a question for the jury. Anderson’s testimony was sufficient evidence of the suspect’s identity, and appellant’s conviction is therefore affirmed.

Affirmed.

PITTMAN, C.J., and ROAF, J., agree.